

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ROGER A. BOUCHARD

and

CITY OF ROCHESTER, NEW HAMPSHIRE
AND GEORGE C. NADEAU, COMMISSIONER

CASE NO. M-0511

Decision 780012

APPEARANCES

Representing the City of Rochester, New Hampshire:

Paul B. Urion, Esq. City Solicitor; Verne E. Remick and Dennis Vashey
of the Public Works Department

Representing the Complainant, Roger A. Bouchard:

James Guyett, United Public Servants Union and NAGE

In attendance: Roger A. Bouchard and Donna L. Bouchard

BACKGROUND

On December 7, 1977, Roger A. Bouchard filed an unfair labor practice charge against the City of Rochester, New Hampshire and George C. Nadeau, Commissioner of Public Works, alleging that he had been indefinitely suspended from his job as truckdriver as a result of a complaint made by one, Gloria Rollins, after a near accident between the Rollins car and the City truck driven by Bouchard. After completing his (Bouchard's) normal run and upon returning to the city barn, he was told by Mr. Nadeau that he was being suspended for swearing at a woman.

FINDINGS

After the incident, a meeting between Bouchard, the Mayor and Mr. Guyett representing the union, was conducted. Immediately after the meeting Mr. Guyett stated if it were okay with Mr. Nadeau, Bouchard could return to work. Subsequent to that meeting, a hearing was held by a committee of the City Council at which time a decision was made to suspend Bouchard indefinitely.

The contract between the city employees and NAGE has expired and was not in force at the time of the incident. It was alleged that the expired contract contained a procedure for an agrieved employee; however, copy of the contract was not produced in evidence before the PELR Board.

PELRB considered a written statement purported to be signed by Gloria Rollins complaining that Bouchard made swearing remarks to her at the time of the incident. This statement was unsworn but witnessed by George C. Nadeau, Commissioner of Public Works, Bouchard's superior and dated November 11, 1977, the day of the incident.

Bouchard had been employed by the City of Rochester for seven years; first, in the Water Department and then in the Refuse Service and had on previous occasions been suspended for certain incidents. Evidence indicated suspension on three occasions and that Bouchard also had some physical problems, not necessarily a constraint on his capabilities of performing his job as a refuse collection truckdriver.

The Appeal Board of the Rochester City Council after hearing the Bouchard case, issued no written ruling but stated orally that Bouchard was to be suspended indefinitely. Mr. Beasley, Superintendent of the Water Department, testified on Bouchard's employment in that department and suggested that he be transferred to the Highway Department as a refuse collection truckdriver.

Mr. Remick, Assistant Commissioner, testified that the City of Rochester fired nobody but rather tried to move employees around to where they would fit the best. He also testified regarding employee attitudes in the Highway Department and Bouchard's relationship with his fellow employees. Certain testimony before the Board regarding misuse of gasoline from the city barn was presented but no factual evidence produced.

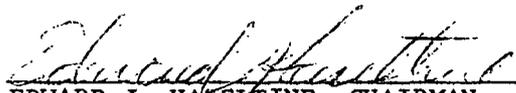
Mr. Remick also testified that Bouchard could be highly emotional under certain conditions and that the Public Works Committee thought that Bouchard was terminated, however, the record showed him to be indefinitely suspended.

After listening to and considering all the testimony, PELRB cannot find any basis for keeping an employee of the City of Rochester Public Works Department in a state of limbo by being under indefinite suspension for a substantial length of time, thus depriving the employee of his right to receive unemployment compensation and resulting in certain constraints in seeking other employment. To be indefinitely suspended from November 11, 1977, without a final resolution of his status as an employee is in fact unfair.

BOARD DECISION AND ORDER

The Board finds the City of Rochester, New Hampshire guilty of unfair labor practice by suspending indefinitely an employee, one, Roger A. Bouchard of Oak Street, Gonic, New Hampshire

The Board also orders immediate reinstatement of employee Bouchard and awards him back pay up to the date of the meeting by the appropriate committee of the Rochester City Council who ordered his indefinite suspension.


EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 28th day of March, 1978